

ORIGINAL



UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

\_\_\_\_\_)  
In the Matter of )  
)  
)  
NORTH CAROLINA STATE BOARD OF )  
DENTAL EXAMINERS, )  
)  
Respondent. )  
\_\_\_\_\_)

PUBLIC

DOCKET NO. 9343

**COMPLAINT COUNSEL’S RESPONSE TO RESPONDENT’S MOTION TO STAY THE  
PROCEEDINGS AND [PROPOSED] ORDER**

Complaint Counsel does not oppose Respondent’s Motion for a Stay of the Proceedings pending a ruling by the Commission on Complaint Counsel’s Motion for Partial Summary Decision and Respondent’s Motion to Dismiss for the reasons set forth below. Complaint Counsel has attached a Proposed Order incorporating reference to this Response for use in the event the Commission grants Respondent’s Motion for a Stay.

1. On November 2, 2010, Complaint Counsel filed a Motion for Partial Summary Decision to dismiss Respondent North Carolina State Board of Dental Examiners’ affirmative defense under the “State Action Doctrine” so that the proceeding may focus efficiently on those issues as to which there is a bona fide factual controversy.
2. On November 3, 2010, Respondent filed a Motion to Dismiss and a Motion to Stay in this matter.

3. Pursuant to Commission Rule of Practice 3.22(b), the Commission in its discretion may order that a proceeding be stayed while a dispositive motion is under consideration.
4. Complaint Counsel's Motion for a Partial Summary Decision and Respondent's Motion to Dismiss are dispositive motions pending before the Commission. A ruling by the Commission on Complaint Counsel's motion would substantially narrow the issues to be determined at trial and would expedite the proceeding. Alternatively, a ruling by the Commission granting Respondent's motion would be dispositive of this matter.
5. Remaining trial preparation includes several items of general discovery, the entirety of expert discovery including expert reports and depositions, preparing the pre-trial brief, identifying exhibits, and witness preparation. An expedited ruling on the stay, followed by the ruling on the dispositive motions, may reduce or eliminate the expenses associated with this remaining trial preparation.
6. Complaint Counsel also notes that the Commission granted a stay after a Motion to Dismiss on state action grounds was filed in *In re South Carolina State Board of Dentistry*, <http://www.ftc.gov/os/adjpro/d9311/031023ordgrntrespmotostaydiscov.pdf> (Oct. 23, 2003).

Richard A. Feinstein , Director  
Pete Levitas, Deputy Director  
Melanie Sabo, Assistant Director  
Geoffrey M. Green, Deputy Assistant Director

Bureau of Competition

Respectfully submitted,

s/ Richard B. Dagen

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Office of Policy & Coordination

Dated: November 5, 2010

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	)	
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	)	

**[PROPOSED] ORDER**

Having carefully considered Respondent's Motion for Stay of the Proceedings and Complaint Counsel's Response wherein Complaint Counsel does not oppose the Motion, it is hereby,

ORDERED, that Respondent's Motion for Stay of the Proceedings is granted and that the proceeding is stayed pending review of Complaint Counsel's Motion for Partial Summary Decision and Respondent's Motion to Dismiss.

ORDERED:

By the Commission.

\_\_\_\_\_  
Donald S. Clark  
Secretary

SEAL

ISSUED:

**CERTIFICATE OF SERVICE**

I hereby certify that on November 5, 2010, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-159  
Washington, DC 20580

I also certify that I delivered via electronic mail and hand delivery a copy of the foregoing document to:

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

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*Counsel for Respondent  
North Carolina State Board of Dental Examiners*

**CERTIFICATE FOR ELECTRONIC FILING**

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

November 5, 2010

By: s/ Richard B. Dagen  
Richard B. Dagen